

REMARKS

Claims 1-24 are pending in the above-identified application. Claims 1-24 have been rejected. Claim 1 and claims 21-24 are amended. Support for this amendment can be found throughout the specification as filed at, for example, paragraphs [0002], [0003], [0018], [0019], [0024] and [0027]-[0030]. Accordingly, no new matter is added by way of this amendment. Applicants respectfully request reconsideration of claims 1-24 in view of the following remarks.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-8 and 21-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Testi (USPN 2,288,979, hereafter referred to as Testi) in view of Garrod (USPN 922,272, hereafter referred to as Garrod). Specifically, the Examiner states:

Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. Testi discloses dispensing stripes of metal which can be tested and held at one or more positions. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Testi does not disclose dispensing a test strip it is capable of dispensing such an item.

The Examiner acknowledges that “Testi does not disclose an immovable structure opposite the strip movement structure.” The Examiner states that “Garrod teaches a dispenser with an immovable structure opposite the strip movement structure.” However, the Examiner asserts that “[i]t would be obvious to one skilled in the art to have an immovable structure opposite the strip movement structure because it prevents the strip being dispensed from moving away from the movement structure.” Applicants respectfully disagree.

In addition, claims 1-5, 12-17 and 19-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alltop et al. (USPN 3,308,989, hereafter referred to as Alltop) in view of Anderson et al. (USPN 6,082,581, hereafter referred to as Anderson). Specifically, the Examiner states that

Alltop discloses a dispenser comprising a main body and a thumb actuated pressed dispensing element. The dispensing element includes slots and protrusions for guiding the element and stopping its movement at first and second

positions and a protrusion for contacting the strip. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Alltop does not disclose dispensing a test strip it is capable of dispensing such an item.

The Examiner acknowledges that Alltop does not disclose an immovable structure opposite the strip movement structure. The Examiner states that “Anderson teaches a dispenser with an immovable structure opposite the strip movement structure.” However, the Examiner alleges that “[i]t would be obvious to one skilled in the art to have an immovable structure opposite the strip movement structure because it prevents the stripe being dispensed from moving away from the movement structure.” Applicants respectfully disagree.

Finally, claims 9-11 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Testi/Garrod in view of Wajda (PGpub 2003/0121932, hereafter referred to as Wajda). Specifically, the Examiner states “Testi/Garrod discloses the dispenser as claimed in claims 1-8.” The Examiner acknowledges that “Testi/Garrod does not disclose a ball shaped dispenser.” The Examiner states “Wajda teaches a ball shaped dispenser wheel.” However, the Examiner contends that “[i]t would be obvious to one skilled in the art to modify the dispenser of Testi to use a ball instead of a cylinder as it is an art recognized alternative.” Applicants respectfully disagree.

Standard for Obviousness

The Patent and Trademark Office has the burden under section 103 to establish a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-87 (Fed. Cir. 1984). In the recent decision by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007), the Supreme Court reaffirmed the framework for determining obviousness as set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). See MPEP §2141 and §2143. To establish a *prima facie* case of obviousness, three basic criteria must be met: first, the prior art reference (or references when combined) must teach or suggest each element claimed; second, one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same

function as it does separately; finally, one of ordinary skill in the art would have recognized that the results of the combination were predictable. See MPEP §2143.

Claims 1-8 and claims 21-24 are not obvious over Testi in view of Garrod

Claims 1-8 and 21-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Testi in view of Garrod. Applicants respectfully disagree.

Amended claim 1 is directed to a testing system which comprises a meter comprising a port for receiving a test strip and a strip transport assembly comprising a body and a strip movement section. The body comprises an opposing surface opposite the strip movement section, wherein the opposing surface is immovable. The strip movement section comprises a pressing element which is the only element of the strip movement section movable relative to the body. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip which is supported on the immovable opposing surface. The pressing element is then moved by the operator, while maintaining contact with the strip, such that the strip is transported into and/or out of the meter port.

Amended claim 21 teaches a testing system which comprises a meter, a body and a pressing element. The meter comprises a port for receiving a test strip. The body comprises an opposing surface opposite the pressing element, wherein the opposing surface is immovable. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip. A friction force between a surface of the pressing element and at least one surface of the strip against which the surface of the pressing element is pressed transports the strip into and/or out of the meter port.

Testi

Testi discloses a blade receptacle designed and intended to handle a stack of double-edged safety razor blades, each of which has a longitudinal central slot (39). The blade receptacle comprises a cover (10) with a delivery slot (13), a roll (15) with a concentric flange or collar (16), and a bowed leaf spring (17). The delivery slot (13) at the upper edge of the receptacle is of such width as to permit the passage of only one blade at a time. The roll (15) is of such diameter as to extend into engagement with the uppermost one of a stack of blades when

the roll (15) is depressed to the bottom of its bearing slots (14). The flange or collar (16) extends at all times into the slot in the blade stack provided by the aligned slots (39) of the individual blades. In using the blade receptacle, it is necessary to rotate the roll (15) in the proper direction by drawing a thumb or finger across the roll (15). Only the uppermost blade can advance out through the delivery slot (13). The movement of the uppermost blade is guided by the action of the flange or collar (16) of the roll (15) as the edges of the slot (39) travel past the flange or collar (16). The blade receptacle relies on the bowed leaf spring (17) located in the bottom of the receptacle which acts normally to lift and maintain the stack so that its uppermost blade is in yielding contact with the inner face of the cover (10).

In addition to the arguments of record, the deficiencies of Testi compared to amended claim 1 are at least the following. The blade receptacle disclosed in Testi does not include a meter comprising a port for receiving a test strip. Neither is the blade receptacle configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the blade receptacle disclosed in Testi compared to the testing system disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Claims 2-8 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Accordingly, the deficiencies of Testi compared to claims 2-8 are at least those described above with respect to amended claim 1. There are other deficiencies in the blade receptacle disclosed in Testi compared to the testing system disclosed in claims 2-8. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

In addition to the arguments of record, the deficiencies of Testi compared to amended claim 21 are at least the following. As discussed above, the blade receptacle disclosed in Testi does not include a meter comprising a port for receiving a test strip. Neither is the blade receptacle configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the blade receptacle disclosed in Testi compared to the testing system disclosed in amended claim 21. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Claims 22-24 depend from amended claim 21, and therefore, include all the elements of amended claim 21. Accordingly, the deficiencies of Testi compared to claims 22-24 are at least those described above with respect to amended claim 21. There are other deficiencies in the blade receptacle disclosed in Testi compared to the testing system disclosed in claims 22-24. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

The Examiner states that Garrod remedies the deficiencies of Testi compared to claims 1-8 and claims 21-24 because “Garrod teaches a dispenser with an immovable structure opposite the strip movement structure.” Applicants respectfully disagree.

Garrod

Garrod is directed to a ticket holder. The ticket holder comprises a substantially rectangular box having a back 2, sides 3, a bottom 4 and a front 5, and a door 6 hingedly connected with the front 5, and a roller ejector 10 positioned between sides 3 and provided with a plurality of spaced teeth 11, a operating handle for the roller. The ticket holder can be used to hold and dispense tickets of a continuous form in which each of the tickets is connected with the other by a line of perforations. In operation, a ticket is engaged with and dispensed by the teeth 11 of the roller ejector 10, wherein the rotation of the roller ejector 10 is driven by an operator through the operation handle.

The deficiencies of Garrod compared to amended claim 1 are at least the following. The ticket holder disclosed in Garrod does not include a meter comprising a port for receiving a test strip. Neither is the ticket holder configured to transport the test strip into and/or out of the meter port. The ticket holder disclosed in Garrod is intended to be used to hold and dispense tickets. There are other deficiencies in the ticket holder disclosed in Garrod compared to the testing system disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Garrod in future prosecution if needed.

Claims 2-8 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Accordingly, the deficiencies of Garrod compared to claims 2-8 are at least

those described above with respect to amended claim 1. There are other deficiencies in the ticket holder disclosed in Garrod compared to the testing system disclosed in claims 2-8. Applicants reserve the right to argue these and other deficiencies of Garrod in future prosecution if needed.

The deficiencies of Garrod compared to amended claim 21 are at least the following. As discussed above, the ticket holder disclosed in Garrod does not include a meter comprising a port for receiving a test strip. Neither is the ticket holder configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the ticket holder disclosed in Garrod compared to the testing system disclosed in amended claim 21. Applicants reserve the right to argue these and other deficiencies of Garrod in future prosecution if needed.

Claims 22-24 depend from amended claim 21, and therefore, include all the elements of amended claim 21. Accordingly, the deficiencies of Garrod compared to claims 22-24 are at least those described above with respect to amended claim 21. There are other deficiencies in the ticket holder disclosed in Garrod compared to the testing system disclosed in claims 22-24. Applicants reserve the right to argue these and other deficiencies of Garrod in future prosecution if needed.

At least in view of the foregoing, Applicants respectfully submit that Garrod does not remedy the deficiencies of Testi with respect to amended claim 1. In particular, neither Testi nor Garrod teaches a testing system comprising a meter comprising a port for receiving a test strip. Moreover, neither the blade receptacle disclosed in Testi nor the ticket holder disclosed in Garrod is configured to transport a test strip into and/or out of a meter port. Claims 2-8 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Thus, Applicants respectfully submit that Garrod does not remedy the deficiencies of Testi with respect to claims 2-8. Accordingly, Applicants respectfully submit that claims 1-8 are not obvious over Testi in view of Garrod.

Similarly, Applicants respectfully submit Garrod does not remedy the deficiencies of Testi with respect to amended claim 21. In particular, neither Testi nor Garrod teaches a testing system that includes a meter comprising a port for receiving a test strip. Moreover, neither the blade receptacle disclosed in Testi nor the ticket holder disclosed in Garrod is configured to transport a test strip into and/or out of a meter port. Claims 22-24 depend from amended

claim 21, and therefore, include all the elements of amended claim 21. Thus, Applicants respectfully submit that Garrod does not remedy the deficiencies of Testi with respect to claims 22-24. Accordingly, Applicants respectfully submit that claims 21-24 are not obvious over Testi in view of Garrod.

In view of the foregoing, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 1-8 and claims 21-24 under 35 U.S.C. 35 §103(a) over Testi in view of Garrod.

Claims 1-5, 12-17 and 19-24 are not obvious over Alltop in view of Anderson

Claims 1-5, 12-17 and 19-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alltop in view of Anderson. Applicants respectfully disagree.

Alltop

Alltop teaches a business card dispenser. The business card dispenser comprises a main frame **16** with a top wall **17**, a rectangular spring retainer **40**, an actuator **13**, a pusher plate **44** with a shoulder **51** at the trailing edge **50** of the pusher plate **44**, and a slot **38** defined by the lip **28** of the top wall **17** and an edge **53** of an end wall **35**. The width of the slot **38** is such that only one business card can be pushed through the slot **38** below the lip **28**. The rectangular spring retainer **40** urges a stack of business cards toward the top wall **17**. The shoulder **51** of the pusher plate **44** has a depth substantially equal to the thickness of a comparatively thin business card so that only one card can be dispensed at a time. The pusher plate **44** is mounted on for reciprocation with the actuator **13**. As the actuator **13** is moved from one side to another side, the shoulder **51** engages the uppermost card of the stack and forces it along the top wall **17** through the slot **38**.

In addition to the arguments of record, the deficiencies of Alltop compared to amended claim 1 are at least the following. The business card dispenser disclosed in Alltop does not include a meter comprising a port for receiving a test strip. Neither is the business card dispenser configured to transport a test strip into and/or out of a meter port. There are other deficiencies in

Alltop compared to the testing system disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Claims 2-5, 12-17 and 19-20 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Accordingly, the deficiencies of Alltop compared to claims 2-5, 12-17 and 19-20 are at least those described above with respect to amended claim 1. There are other deficiencies in the business card dispenser disclosed in Alltop compared to the testing system disclosed in claims 2-5, 12-17 and 19-20. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

In addition to the arguments of record, the deficiencies of Alltop compared to amended claim 21 are at least the following. As discussed above, the business card dispenser described in Alltop does not include a meter comprising a port for receiving a test strip. Neither is the business card dispenser configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the business card dispenser disclosed in Alltop compared to the testing system disclosed in amended claim 21. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Claims 22-24 depend from amended claim 21, and therefore, include all the elements of amended claim 21. Accordingly, the deficiencies of Alltop compared to claims 22-24 are at least those described above with respect to amended claim 21. There are other deficiencies in the business card dispenser disclosed in Alltop compared to the testing system disclosed in claims 22-24. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

The Examiner alleges that Anderson remedies the deficiencies of Alltop compared to claims 1-5, 12-17 and 19-24 because “Anderson teaches a dispenser with an immovable structure opposite the strip movement structure.” Applicants respectfully disagree.

Anderson

Anderson is directed to a business card dispenser. The business card dispenser comprises a thin walled container **12** having a top **14**, a bottom **16**, and an interior cavity **20**; a dispensing

slot **50**; a gripping foot **54** manually movable toward and away from the dispensing slot **50**, the gripping foot **54** being arranged to engage an uppermost one of the business cards in the stack; means (e.g., a slider **52** connected with a dog leg shaped or knee shaped spring **56**) for manually moving the gripping foot **54**; and an inclined plane **58** extending at a gradual upward slope from the bottom **16** of the interior cavity **20** to the dispensing slot **50** such that as the gripping foot **54** moves toward the dispensing slot **50** the uppermost card is guided solely by the gradual upward slope of the inclined plane **58** to the dispensing slot **50**.

The deficiencies of Anderson compared to amended claim 1 are at least the following. The business card dispenser disclosed in Anderson does not include a meter comprising a port for receiving a test strip. Neither is the business card dispenser configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the business card dispenser disclosed in Anderson compared to the testing system disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Anderson in future prosecution if needed.

Claims 2-5, 12-17 and 19-20 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Accordingly, the deficiencies of Anderson compared to these dependent claims are at least those described above with respect to amended claim 1. There are other deficiencies in the business card dispenser disclosed in Anderson compared to the testing system disclosed in these dependent claims. Applicants reserve the right to argue these and other deficiencies of Anderson in future prosecution if needed.

The deficiencies of Anderson compared to amended claim 21 are at least the following. As discussed above, the business card dispenser disclosed in Anderson does not include a meter comprising a port for receiving a test strip. Neither is the business card dispenser configured to transport a test strip into and/or out of a meter port. There are other deficiencies in the business card dispenser disclosed in Anderson compared to the testing system disclosed in amended claim 21. Applicants reserve the right to argue these and other deficiencies of Anderson in future prosecution if needed.

Claims 22-24 depend from amended claim 21, and therefore, include all the elements of amended claim 21. Accordingly, the deficiencies of Anderson compared to claims 22-24 are at

least those described above with respect to amended claim 21. There are other deficiencies in the business card dispenser disclosed in Anderson compared to the testing system disclosed in claims 22-24. Applicants reserve the right to argue these and other deficiencies of Anderson in future prosecution if needed.

At least in view of the foregoing, Applicants respectfully submit that Anderson does not remedy the deficiencies of Alltop with respect to amended claim 1. In particular, neither Alltop nor Anderson teaches a testing system that includes a meter comprising a meter port for receiving a test strip. Moreover, neither the business card dispenser disclosed in Alltop nor that disclosed in Anderson is configured to transport a test strip into and/or out of a meter port. Claims 2-5, 12-17 and 19-20 depend from amended claim 1, and therefore, include all the elements of amended claim 1. Thus, Applicants respectfully submit that Anderson does not remedy the deficiencies of Alltop with respect to these dependent claims. Accordingly, Applicants respectfully submit that claims 1-5, 12-17 and 19-20 are not obvious over Alltop in view of Anderson.

Similarly, Applicants respectfully submit Anderson does not remedy the deficiencies of Alltop with respect to amended claim 21. In particular, neither Alltop nor Anderson teaches a testing system that includes a meter comprising a meter port for receiving a test strip. Moreover, neither the business card dispenser disclosed in Alltop nor that disclosed in Anderson is configured to transport a test strip into and/or out of a meter port. Claims 22-24 depend from amended claim 21, and therefore, include all the elements of amended claim 21. Thus, Applicants respectfully submit that Anderson does not remedy the deficiencies of Alltop with respect to claims 22-24. Accordingly, Applicants respectfully submit that claims 21-24 are not obvious over Alltop in view of Anderson.

In view of the foregoing, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 1-5, 12-17 and 19-24 under 35 U.S.C. 35 §103(a) over Alltop in view of Anderson.

Claims 9-11 are not obvious over Testi/Garrod in view of Wajda

Claims 9-11 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Testi/Garrod in view of Wajda. Applicants respectfully disagree.

As discussed above, Applicants respectfully submit that claim 1 and its dependent claims 2-8 are not obviousness over Testi in view of Garrod. In particular, neither Testi nor Garrod teaches a testing system comprising a meter, much less a meter port for receiving a test strip. Moreover, neither the blade receptacle disclosed in Testi nor the ticket holder disclosed in Garrod is configured to transport the test strip into and/or out of the meter port. There are other deficiencies in Testi and Garrod, alone or in combination, compared to amended claim 1 and its dependent claims 2-8. Applicants reserve the right to argue these and other deficiencies of Testi and Garrod, alone or in combination, in future prosecution if needed.

Wajda

Wajda discloses a dispenser for flat articles. The dispenser comprises a container (12 in Figure 1, 40 in Figure 2, or 60 in Figure 3) holding flat articles, an operation element for a user to maneuver (20 in Figure 1, 42 in Figure 2, or 62 in Figures 3 and 6), and a pressing means (16 in Figure 1, 42 in Figure 2, or 70a and b in Figure 3). In some embodiments, the pressing element is connected to the operation element. In other embodiments, the pressing element is mounted onto a movable mounting means.

In addition to the arguments of record, Applicants respectfully submit that Wajda does not remedy the deficiencies in Testi and Garrod, alone or in combination, with respect to amended claim 1 and its dependent claims 2-8 for at least the following reasons. The dispenser disclosed in Wajda does not include a meter comprising a meter port for receiving a test strip. Neither is the dispenser configured to transport a test strip into and/or out of a meter port. There are other deficiencies in Wajda compared to amended claim 1 and its dependent claims 2-8. Applicants reserve the right to argue these and other deficiencies of Wajda in future prosecution if needed.

At least in view of the foregoing, Applicants respectfully submit that Wajda does not remedy the deficiencies of Testi and Garrod, alone or in combination, with respect to amended

claim 1. In particular, neither Testi nor Garrod nor Wajda teaches a testing system that includes a meter comprising a meter port for receiving a test strip. Moreover, none of the devices disclosed in Testi, Garrod and Wajda is configured to transport a test strip into and/or out of a meter port. Claims 9-11 depend, directly or indirectly, from amended claim 1, and therefore, include all the elements of amended claim 1. Thus, Applicants respectfully submit that Wajda does not remedy the deficiencies of Testi and Garrod, alone or in combination, with respect to claims 9-11. Accordingly, Applicants respectfully submit that claims 9-11 are not obvious over Testi/Garrod in view of Wajda. Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 9-11 under 35 U.S.C. 35 §103(a) over Testi/Garrod in view of Wajda.

Objection to Claim 18

Claim 18 has been objected to as allegedly being dependent from a rejected base claim. The Examiner has acknowledged that claim 18 contains allowable subject matter. Claim 18 depends from claim 13, which depends from claim 12, which, in turn, depends from amended claim 1. Applicants respectfully submit that in view of the foregoing discussion amended claim 1 and its dependent claims 12 and 13 are not obvious over Testi in view of Garrod, or over Alltop in view of Anderson. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the objection to claim 18.

CONCLUSION

Applicants submit that the present Application is in condition for allowance and respectfully request the same. If any issues remain, the Examiner is cordially invited to contact Applicants' representative at the number provided below in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 04-0258.

Respectfully submitted,
Chambers, et al.
DAVIS WRIGHT TREMAINE LLP

Dated: March 23, 2010 By: /Sheila R. Gibson/
Sheila R. Gibson
Registration No. 54,120
Attorney of Record

505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Phone: (213) 633-8670
Facsimile: (415) 276-6599